

REMARKS/ARGUMENTS

35 U.S.C. § 251 Defective Oath Rejection

Examiner rejected claims 1-32, 35-43, 45-48 and 52 under 35 U.S.C. § 251 as being based upon a defective reissue oath under 35 U.S.C. 251 as stated in paragraph 3 of the first action.

The examiner states the oath/declaration is improper. Applicant disagrees. The declaration clearly states:

I verily believe the original patent to be wholly or partially inoperative by reason that the patent claims less than I had a right to claim in the patent. The claim contains excess limitations not necessary for patentability. For example, the claim contains excess limitations not necessary for distinguishing over the prior art.

35 U.S.C. 251 clearly states the error upon which a reissue may be based upon includes the patentee claiming less than he had a right to claim in the patent. (MPEP 1402). Furthermore, an attorney's failure to appreciate the full scope of the invention was held to be an error correctable through reissue. *In re Wilder*, 736 F.2d 1516 (Fed. Cir. 1984).

Applicant is only required to provide a oath/declaration that includes at least one bases for filing the reissue application. By including additional bases that one may argue are not sufficient for a reissue application does not make the oath/declaration defective, so long as at least one acceptable bases for filing the reissue application has been provided. Such is the case in the present matter.

Furthermore, applicant's statement in the declaration that the claims fail to cover embodiments of the invention as claimed in the above-identified reissue application,

clearly is merely an extension of applicant's prior stated error of the patentee claiming less than he had a right to claim in the patent.

35 U.S.C. § 251 Recapture Rejection

Examiner rejected claims 28-32, 35-43, 45-48 and 52 under 35 U.S.C. § 251 as being an improper recapture as explained in paragraph 4 of the first action.

Applicant has made amendments to overcome the recapture rejection.

35 U.S.C. § 102 and § 103 Rejections

Examiner rejected claims 20-32 and 35 under 35 U.S.C. 102 and 103 for the same reasons given in paragraphs 8-12 of the first action. More specifically, the examiner had rejected claims 20-32 and 35 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,339,214 (hereinafter "Nelson").

To anticipate a claims, the reference must teach every element of the claim. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (Manual of Patent Examining Procedures (MPEP) ¶ 2131.)

Applicant's independent claims 20, 28, and 35, include limitations that are not disclosed nor suggested by the Nelson. As a result, Applicant's independent claims are not anticipated by Nelson.

In particular, Applicant's independent claims 20, 28, and 35, include the limitation, or a limitation similar thereto, of *an air duct directing an air flow from an inlet port to a first and second exit port*.

Nelson, however, does not disclose the claimed air duct, with the air duct directing an air flow from an inlet port to a first and second exit port. The examiner stated that the claimed duct is shown as reference numeral 24 of Nelson. Applicant's point out that Nelson identifies 24 as "the internal chamber of the computer." (Nelson col. 2, line 33). The internal chamber is clearly distinct from the claimed air duct directing an air flow from an inlet port to a first and second exit port.

As a result, Nelson fails to disclose applicant's claimed air duct directing an air flow from an inlet port to a first and second exit port. Therefore, Applicant's independent claims 20, 28, and 35, include limitations that are not disclosed nor suggested by Nelson, and are therefore not anticipated by Nelson.

Applicant's remaining claims depend from at least one of the independent claims discussed above, and therefore include the distinguishing claim limitations as discussed above. As a result, Applicant's remaining claims are also patentable.

CONCLUSION

Applicants respectfully submit the present application is in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call John Ward at (408) 720-8300, x237.

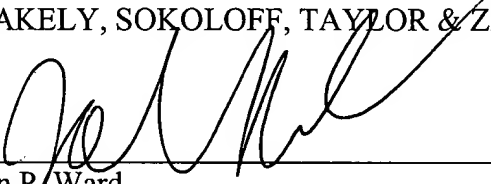
Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date: _____

4/5/09



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